

AGREEMENT FOR TEMPORARY WAIVER OF DEED RESTRICTION
113R07X0045

This Agreement for Temporary Waiver of Deed Restriction ("Agreement") is entered into by and between the County of San Luis Obispo, hereinafter referred to as "County", and AEG Cycling, LLC, hereinafter referred to as "AEG".

County and AEG hereby mutually covenant and agree as follows:

I. **Premises:** Pursuant to the request of the Port San Luis Harbor District, County hereby agrees to temporarily waive a deed restriction recorded in July 7, 1983 in Book 2500 Page 879 of Official Records of the County of San Luis Obispo over the parking lot owned in fee and in easement by the Port San Luis Harbor District and located in Avila Beach, CA at the intersection of First Street and San Francisco Street (APN's 076-213-009 and 076-215-012 and portions of San Francisco Street and Second Street), hereinafter referred to as "Premises" as shown on Exhibit "A" attached hereto and incorporated herein by reference. The deed restriction, which requires 300 parking spaces to be available for use by the general public not less than 365 days per year, shall be waived on the dates on May 15 and 16, 2013 only. Such waiver is expressly conditioned on the following: (1) The Port San Luis Harbor District shall name the County as an additional insured on its commercial general liability policy for the Amgen Tour of California 2013 event and provide County with written evidence of same, as represented by letter dated February 11, 2013, attached hereto as Exhibit "B"; and (2) AEG's full compliance with this Agreement including, without limitation, the indemnification and insurance requirements contained in paragraphs 5 and 6 below .

2. **Use:** AEG may enter into an agreement with the Port San Luis Harbor District for use of the Premises on May 15 and 16, 2013 provided that such use is related to the Amgen Tour of California 2013. The temporary waiver of the deed restriction referenced in paragraph 1 above is for the Amgen Tour of California 2013 event and no other.

3. **Fee:** As consideration for County's authorization of this Agreement, AEG has paid to County the non-refundable sum of One Thousand Dollars (\$1,000).

4. **Compliance:** AEG agrees and promises that it will comply with and observe

any and all statutes, ordinances, rules and regulations of the Federal, State, Municipal, County or other public authority, and as amended.

5. Indemnity: AEG shall defend, indemnify and hold harmless the County, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Agreement or the Premises hereunder, except to the extent arising out of the negligence or willful misconduct of the County, its officers and employees. For clarity, in the event of comparative responsibility for any such claims or losses, AEG shall be responsible for its actions to the extent it is negligent or commits willful misconduct, and County shall be responsible for its actions to the extent it is negligent or commits willful misconduct.

The preceding paragraph applies to any theory of recovery relating to said act or omission by AEG, or its agents, employees or other independent contractors directly responsible to AEG, including, but not limited to, the following:

- A. Violation of statute, ordinance, or regulation.
- B. Professional malpractice.
- C. Willful, intentional or other wrongful acts, or negligent failures to act.
- D. Negligence or recklessness.
- E. Furnishing of defective or dangerous products.
- F. Premises liability.
- G. Strict liability.
- H. Inverse Condemnation.
- I. Violation of civil rights.
- J. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when AEG is not an independent contractor.

If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

6. **Insurance:** AEG shall obtain and maintain for the entire term of the Agreement and AEG shall not occupy the Premises under this Agreement until after it has obtained insurance complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the County, and obtained County approval of all such policies. Said policies shall be issued by companies authorized to do business in the State of California. AEG shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. **Commercial Liability Insurance:** AEG shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of AEG's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of Two Million Dollars (\$2,000,000). The following endorsements must be attached to the policy:

- (1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".
- (2) The policy must cover personal injury as well as bodily injury.
- (3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. **Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if AEG has any employees, AEG is required to be insured against liability for workers' compensation or to undertake self insurance. AEG agrees to comply with such provisions before commencing

the performance of this Contract.

C. Additional Insureds to be Covered: The commercial general liability policies shall name "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the AEG's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

D. Certification of Coverage: Prior to commencing work under this contract, AEG shall furnish County with the following for each insurance policy required to be maintained by this Agreement:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(2) A copy of AEG's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, AEG shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which AEG may be held responsible for payment of damages resulting from AEG's services or operations pursuant to this Agreement. Further, County's act of acceptance of an insurance policy does not waive or relieve AEG's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

E. Effect of Failure or Refusal: If AEG fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish County with the certifications required by *Subparagraph D.* above, County shall have the right, at its

option, to forthwith terminate the Agreement for cause.

7. **Notices:** All notices shall be in writing, either personally served or delivered by U.S. Mail Postage prepaid and addressed to County of San Luis Obispo, General Services Agency, 1087 Santa Rosa Street, San Luis Obispo, CA 93408 Attn: Real Property Services and AEG at AEG Cycling, LLC, 800 W. Olympic Blvd, Suite 305, Los Angeles, CA 90015 (business address) or 865 S. Figueroa St, Suite 800, Los Angeles, CA 90017 (physical address).

8. **Venue:** This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

9. **Severability:** The invalidity of any provision of this Agreement shall not affect the validity, enforceability of any other provision of this Agreement.

10. **Entire Agreement and Modifications:** This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. AEG shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. AEG specifically acknowledges that in entering into this Agreement, AEG relies solely upon the provisions contained in the Agreement and no other Agreement or oral discussions prior to entering this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed
on the ____ day of _____, 2013.

COUNTY:
COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of
Supervisors

Approved by the Board of Supervisors
this
____ day of _____, 2013.

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND
LEGAL EFFECT:

RITA L. NEAL

County Counsel

By: Shanna Matosque
Deputy County Counsel

Date: 3/11/13

AEG:
AEG Cycling, LLC

By: Kristin Bachochin
Senior Vice President

Date: 3-7-13



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THOMAS D. GREEN Legal Counsel
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February 11, 2013

Caryn Maddalena
Real Property Manager
County of San Luis Obispo
1087 Santa Rosa Street
San Luis Obispo, CA 93408

via e-mail only to: lmcfleet@co.slo.ca.us

Dear Ms. Maddalena:

The Port San Luis Harbor District ("Harbor District") operates a large public parking lot located at the intersection of First Street and San Francisco Street (APN's 076-213-009 and 076-215-012 and portions of San Francisco Street and Second Street). The parking lot is owned by the District, partly in fee and partly in easement. When the property was acquired from the County of San Luis Obispo, the quitclaim deed included a deed restriction requiring that not less than 300 of the parking spaces shall be "available for use by the general public not less than 365 days per year."

The Harbor District has been working with the Amgen Tour of California to arrange stage #5 of the bicycle race to end in Avila Beach on May 16, 2013. Amgen has requested use of the parking lot for activities related to the race. Sufficient public parking will not be available in Avila Beach for the thousands of people expected to attend the race if they were to drive to the destination, so shuttle points are being arranged to assist the public to reach Avila Beach.

The Harbor District requests the County Board of Supervisors to approve an agreement with Amgen that would temporarily waive the parking lot deed restriction on May 15 and 16, 2013 to allow Amgen to use the parking lot for activities related to the race, in exchange for Amgen's agreement to indemnify the County and name the County as an additional insured related to the event. Such waiver would allow the Harbor District to contract with Amgen to use the parking lot during those dates. In exchange for this waiver and conditioned upon it, the Harbor District agrees to name the County as additionally insured on their insurance policy related to the parking lot activities at this location on the above dates.

I represent that I have the full authority to sign this letter and to bind the Harbor District in my capacity as Harbor Manager to the terms set forth herein.

Sincerely,

Steve McGrath
Harbor Manager

EXHIBIT "B"